

REMARKS

Claims 1-16 were rejected under 35 U.S.C. § 102(e) as being anticipated by WO 02/064898 to Wilson. WO 02/064898 is the only reference applied to the claims.

As an initial matter, the Applicants' wish to note relevant sections of the M.P.E.P. which state that "under revised 35 U.S.C. 102(e), an international filing date which is on or after November 29, 2000 is a United States filing date if the international application designated the United States and was published by the World Intellectual Property Organization (WIPO) under the Patent Cooperation Treaty (PCT) Article 21(2) in the English language. Therefore, the prior art date of a reference under 35 U.S.C. 102(e) may be the international filing date (if all three conditions noted above are met) or an earlier U.S. filing date for which priority or benefit is properly claimed." See M.P.E.P. 706.02(a) Rev. 2, May 2004. However, "foreign applications' filing dates that are claimed (via 35 U.S.C. 119(a) – (d), (f) or 365(a)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S., may not be used as 35 U.S.C. 102(e) dates for prior art purposes. See M.P.E.P. 2136.03 Rev. 2, May 2004. Based on the guidance above, the critical reference date of WO 02/064898 is no earlier than February 11, 2002, the PCT International filing date of WO 02/064898.

The Applicants submit herewith a declaration with evidence of reduction to practice of the claimed invention in the United States prior to February 11, 2002, the PCT International filing date of WO 02/064898. Accordingly, it is respectfully requested that the rejection of the claims of the present application based on WO 02/064898 be withdrawn.

Conclusion

It is submitted that the application is in condition for allowance. Favorable reconsideration is respectfully requested.

A fee is not believed to be due for this amendment. However, should a fee be deemed due by the Commissioner, such fee should be charged to Deposit Account No. 10-0849.

Respectfully submitted,

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